

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:18-CV-356-D

SAMANTHA ELABANJO,

Plaintiff,

v.

EXCEL PROPERTY MANAGEMENT, INC.,

CALVARY TRACE APARTMENTS,

BLAKE BRAZIER, CHRIS HANSON,

KIMBERLY M. LILLY DUPREE,

LINDA POOLE, and ANN HANSON,

Defendants.

ORDER

On July 18, 2018, Samantha Elabanjo (“Elabanjo” or “plaintiff”) appearing pro se, filed a motion to proceed in forma pauperis under 28 U.S.C. § 1915 [D.E. 1]. On July 23, 2018, the court referred the motion to Magistrate Judge Numbers for frivolity review [D.E. 4]. On September 11, 2018, Judge Numbers issued a Memorandum and Recommendation (“M&R”) and recommended that Elabanjo’s application to proceed in forma pauperis be granted and that the complaint be allowed to proceed in part and dismissed in part. See [D.E. 6]. Elabanjo did not respond to the M&R.

“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely objection, “a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond, 416 F.3d at 315 (quotation omitted).

The court has reviewed the M&R and the record. The court adopts the M&R in part and rejects it in part. Accordingly, the following claims by Elabanjo survive frivolity review and may proceed:


1. the Fair Housing Act of 1968 discrimination claim;
2. the breach of contract claim against Calvary Trace;
3. the breach of covenant of quiet enjoyment claim against Calvary Trace;
4. the gross negligence claim; and,
5. the retaliatory eviction claim against Calvary Trace.

The following claims by Elabanjo do not survive frivolity review and are dismissed:

1. the Fifth and Fourteenth Amendment claim against all defendants;
2. the breach of contract claim against all defendants except Calvary Trace;
3. the breach of covenant of quiet enjoyment claim against all defendants except Calvary Trace;
4. the intentional infliction of emotional distress claim against all defendants; and,
5. the retaliatory eviction claim against all defendants except Calvary Trace.

In sum, Elabanjo has demonstrated appropriate evidence of inability to pay the required court costs. Accordingly, plaintiff's application is ALLOWED. The court ADOPTS in part and REJECTS in part the conclusions in the M&R. Elabanjo's complaint is allowed to proceed IN PART. The clerk is DIRECTED to file the complaint and issue the summons prepared by plaintiff. The U.S. Marshal is DIRECTED to serve the summons and a copy of the complaint on defendant.

SO ORDERED. This 4 day of October 2018.



JAMES C. DEVER III
Chief United States District Judge